

DEPARTMENT OF STATE REVENUE

SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 06-0162P

**Negligence Penalty
For Tax Year 2005**

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ISSUE

I. Tax Administration—Negligence Penalty

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the assessment of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana business. The Indiana Department of Revenue ("Department") determined that taxpayer was late in remitting a sales tax return for July 2005 and imposed a ten percent negligence penalty. Taxpayer protested the imposition of penalty and a Letter of Findings was issued denying taxpayer's protest. Taxpayer requested and was granted a rehearing. Further facts will be supplied as required.

I. Tax Administration—Negligence Penalty

DISCUSSION

The Department issued a proposed assessment consisting of a ten percent negligence penalty for the tax period in question. The Department received taxpayer's July 2005 sales tax return a few days later than taxpayer's July 2005 withholding tax return, which was received in a timely manner. Taxpayer protests the imposition of penalty.

Taxpayer states that it has consistently remitted sales tax on time and that it mailed the July 2005 sales tax return simultaneously with its July 2005 withholding tax return. Taxpayer points out that the Department received the withholding return in a timely manner and asserts that the sales tax return may have been temporarily misplaced by the Post Office. The Department refers to IC§ 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(4) fails to timely remit any tax held in trust for the state;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

A review of the Department's records indicates that taxpayer has consistently remitted sales tax in a timely manner. Taxpayer's explanation shows that it did exercise reasonable care as explained by 45 IAC 15-11-2(b). In this case, taxpayer did not fail to timely remit tax held in trust, and so is not subject to a penalty under IC § 6-8.1-10-2.1(a). Taxpayer has affirmatively established that the late arrival of the sales tax return was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is sustained.

WL/BK/DK September 25, 2006